

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 2153 – HB 3198

March 6, 2012

SUMMARY OF BILL: Adds carjacking and especially aggravated burglary to the list of offenses for which 100 percent of the sentence imposed, less sentence credits earned and retained, must be served. No sentence reduction credits shall reduce the sentence imposed by the court by more than 15 percent. Requires the Department of Correction (DOC) to release an offender, who is serving one or more concurrent or separate sentences, when such offender reaches the age of 65 and has served a minimum of 15 consecutive calendar years of the sentence or sentences imposed. Prohibits application of this provision to offenders serving consecutive sentences, first degree murder sentences under Tenn. Code Ann. § 39-13-202, or sexual offenses or violent sexual offenses under Tenn. Code Ann. § 40-39-202. Authorizes any person, convicted and sentenced prior to the enactment of this bill, to elect to come within its provisions by filing an affidavit with the Department and the appropriate sentencing court.

ESTIMATED FISCAL IMPACT:

Decrease State Expenditures - Net Impact – \$74,000/Incarceration*

Assumptions:

- Currently, carjacking and especially aggravated burglary are both Class B felonies with a sentencing range of eight to thirty years.
- According to DOC, there has been an average of 28 admissions for carjacking offenses in each of the past 10 years.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will result in three additional offenders for carjacking. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 31 offenders for carjacking offenses.
- According to DOC, the average length of sentence for carjacking offenses is 8.93 years. Eighty-five percent of the average sentence is 7.59 years (8.93 x 85%). According to DOC statistics for FY2000 - FY2011, the average post-conviction time served for carjacking is 6.09 years. Requiring offenders to serve 85 percent of the sentence imposed will result in these offenders serving an additional 1.50 years (7.59 years – 6.09 years).

- According to the Department, 25.5 percent of offenders will re-offend within one year of their release. A recidivism discount of 25.5 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (31 offenders x 25.5% recidivism discount = 8 offenders).
- According to the DOC, the average operating cost per offender per day for calendar year 2012 is \$61.36.
- Twenty-three offenders (31 – 8) convicted of carjacking offenses will serve an additional 1.50 years (7.59 years – 6.09 years) as a result of this bill. The additional operating cost per offender for increasing the average amount of time served by 1.50 years (547.88 days) is \$33,617.92 (\$61.36 x 547.88 days). The total additional operating cost for 23 offenders is \$773,212.16 (\$33,617.92 x 23 offenders).
- According to DOC, there has been an average of eight admissions for especially aggravated burglary offenses in each of the past ten years. Population growth will result in one additional offender. The maximum cost in the tenth year is based on nine offenders.
- According to DOC, the average length of sentence for especially aggravated burglary offenses is 10.10 years. Eighty-five percent of the average sentence is 8.59 years (10.10 x 85%). According to DOC statistics for FY2000-2011, the average post-conviction time served for especially aggravated burglary is 6.79 years. Requiring offenders to serve 85 percent of the sentence imposed will result in these offenders serving an additional 1.80 years (8.59 years – 6.79 years).
- According to the Department, 25.5 percent of offenders will re-offend within one year of their release. A recidivism discount of 25.5 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (9 offenders x 25.5% recidivism discount = 2 offenders).
- Seven (9 – 2) offenders convicted of especially aggravated burglary offenses will serve an additional 1.80 years (8.59 years – 6.79 years). The additional operating cost per offender for increasing the average amount of time served by 1.80 years (657.45 days) is \$40,341.13 (\$61.36 x 657.45 days). The total additional operating cost for seven offenders is \$282,387.91 (\$40,341.13 x 7 offenders).
- The total additional operating cost is \$1,055,600.07 (\$773,212.16 + \$282,387.91).
- According to the DOC, there has been an average of 34 offenders in each of the past six years that would be eligible for the early release provision. Population growth will result in four additional offenders in the tenth year. The Department assumes 20 percent or 8 (38 x 20% = 8) of these offenders would be ineligible for release due to consecutive sentencing. The remaining 30 offenders (38 -8) would be eligible for release after serving the mandatory 15-consecutive years as required by the bill.
- DOC assumes that these offenders were sentenced to Class A felonies and would serve an average of 16.68 years (6,092.37 days) without the proposed bill. Thirty offenders aged 65 or older will serve 1.68 years (613.62 days) less resulting in a recurring decrease in state expenditures of \$1,129,551.70 (\$61.36 x 613.62 days x 30 offenders).

- The net impact is a recurring decrease in state expenditures of \$73,951.63 (\$1,129,551.70 - \$1,055,600.07).
- According to DOC, the medical costs for offenders are paid on a per diem basis per offender. The only additional expense the Department incurs is for hospitalizations greater than \$50,000 and some medications for HIV and Hepatitis C patients. The Fiscal Review Committee staff has reviewed the current contract for medical services, along with the Request for Proposal that preceded the contract. It does not appear that age of offenders was addressed in either document as a factor. If there is a fiscal impact to the Department's medical costs resulting from the release of offenders over age 65, it is not known.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise".

Lucian D. Geise, Executive Director

/lsc